

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. JOSE TAYABA, DEFENDANT AND APPELLANT.

G.R. No. 43137. December 05, 1935

Ponente: RECTO, J.

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RECTO, J.:

Jose Tayaba, a young man of 17 years of age, appeals from a decision of the Court of First Instance of Pangasinan finding him guilty of the crime of attempted rape and ordering his confinement in the Government reformatory until he attains the age of twenty-one years, in the meantime suspending the proceedings in the case.

"The uncontradicted evidence", literally reads the appealed judgment, "shows that between 9 and 10 o'clock on the night of the day in question, while the offended party, a married woman, was alone in her house, the accused entered therein and, finding her asleep, raised her dress and placed himself on top of her. Upon waking up, she immediately cried for help and it was then that the accused, with a knife in his right hand and holding the right shoulder of the offended party with his left, threatened her if she did not keep quiet. As she continued to shout and offer resistance, the accused possibly touched her with his knife, inflicting slight injuries upon her body. The chemise and the dress worn by the offended party on said occasion were torn in the fore part of the neck. Attracted by the cries VOL. 62, DECEMBER 5, 1935 561 People vs. Tayaba of the offended party, the witness Pedro Martinez, her neighbor, came to her rescue and, upon entering the house, recognized the accused in under-garments. Upon noting Martinez's presence, the accused, in turn, hastily left the house and ran away. The defense presented no evidence."

It is claimed that there is an error in the appealed judgment because it affirms that the accused "raised the offended party's dress" when in fact what she stated in her testimony was that the former "tried to raise the flap of her dress". Of course the discrepancy exists but not to such an extent as to alter the juridical qualification given by the trial judge to the crime committed by the accused. If the accused committed the crime of rape because, among other acts, "he raised the dress" of the offended party, according to one of the findings of the judgment, he would not cease to be guilty of the same crime merely because the evidence discloses that he merely "tried to raise it". In order that an attempted crime may exist, it is sufficient, according to the Code that "the offender commences the commission thereof directly by overt acts", without the necessity of their arriving at a more or less advanced stage, provided the commencement of such execution logically leads to the commission of a definite crime, which is not attained by reason of some cause or accident other than the actor's own spontaneous desistance. We, therefore, find no merit in this assignment of error.

It is likewise contended by the defense that the series of acts committed by the accused do not determine attempted rape, and constitute, at most, unjust vexation. This contention implies the confusion of two juridical situations essentially distinct from each other, to wit, unjust vexation, which is a consummated crime, and attempted rape which, as the name itself indicates, is merely an attempted one. In one case, the act or acts performed constitute the very end pursued by the actor; in the other, they merely constitute the means to an end which the actor seeks to attain. In the former, nothing is left for the actor to do; in the latter, he continues to advance through the adequate processes of action to attain his final objective, but fails to realize it not because of

his own voluntary desistance but by reason of the intervention of an extraneous cause. Had the accused in this case abandoned his design after performing the acts committed by him, according to the evidence and the appealed judgment, the crime committed would be unjust vexation. But he persisted in his purpose, which could not have been to vex the offended party because this objective was already attained, but to ravish her through force and intimidation, inasmuch as his acts under the circumstances of the case could not lead to any other end. His attempt, however, was defeated by the timely arrival of a neighbor who came to the rescue of the offended party upon hearing her cries for help. From all the foregoing, we must conclude that the acts of the accused transcended¹ the limits of unjust vexation and arrived, in the continued process of the action, at the field of attempted rape, stopping therein by reason of causes independent of his will. That the intention of the accused was to rape the offended party also appears from the fact that when Pedro Martinez arrived, finding him in his under-garments, and asked what happened, and the offended party answered that the accused wanted to rape her, the accused remained silent and hastily left the house. The accused should have protested against such imputation, if it were not true, but he did not do so, and his silence warrants the conclusion, taking into consideration the acts theretofore committed by him, that he evidently intended to ravish the offended party. In fact, if such was not his intention, what was he trying to accomplish by means of his acts which were in the course of execution when the neighbor, Pedro Martinez, arrived at the scene and prevented their consummation?

The facts of this case are similar to those of *United States vs. Garcia* (9 Phil., 434), where the accused was also convicted of attempted rape. In said case, the facts were:

"* * * the accused, without being in any way connected with Maria Amparo, a married woman, entered her house at a late hour of night at a time when her husband was absent, and forcibly tried to outrage her while asleep, against her will, using violence on her person; and notwithstanding the resistance made by the woman and in spite of her cries to her mother-in-law, who was asleep at a short distance from her in the same house, refused to abandon his criminal purpose. It is an unquestionable fact that the accused was stretched over the offended woman and that when the latter managed to raise herself, the accused endeavored to throw her down, and that from the beginning when she woke up she noticed that her skirt had been raised to the knee; it can not be denied that the accused had begun the commission of his criminal intent to forcibly outrage the offended party, and if he did not perform all of the acts necessary to consummate the crime it was owing to the stubborn resistance offered by the woman and to assistance rendered by her mother-in-law, Maria Manalo."

Considering that it is an essential condition of an attempted crime that the overt acts constituting the same lead directly, with constant intent, to the commission of another act punishable by law (decision of the Supreme Court of Spain of October 7, 1890), and that the overt acts committed by the accused with regard to the attainment of his ultimate purpose, which was to ravish the offended party through intimidation and force, are of the said nature and extent, we are of the opinion and so hold that the appealed judgment is in accordance with law and should be affirmed.

Avanceña, C.J., Abad Santos, Hull, and Vickers, JJ., concur.

Judgment affirmed.

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